

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendation of Executive Director
December 6, 2002**

DOUGLAS KRISBURG,

Complainant

Complaint No. 2002-55

v.

**CITY OF PATERSON,
POLICE DEPARTMENT**

Related Case: 2002-46

Custodian of Records.

Relevant Record Requested: All Police “Calls For Service” on September 10, 2002 (also known as a “Police blotter” or log.)

Date of Request: September 18, 2002

Requester: Richard Gutman, Esq. (on behalf of client Douglas Krisburg)

Custodian receiving request: Jane E. Williams-Warren, Municipal Clerk

Applicable Municipal Ordinance: None

Access Offered with \$150 fee: September 25, 2002

Complaint filed: September 30, 2002

Related case: Fisher v. City of Paterson, GRC No. 2002-46 (challenging \$150 fee for copy of City Police Blotter showing “calls for service” on July 2, 2002)

Executive Director’s Recommendation

Accepting the City’s claim that it took one hour worth of labor and one hour worth of computer time to produce the record requested, the Executive Director recommends that the Council find:

1. That in the absence of any factual information to the contrary from the City, one hour of time is *not* a “substantial amount of manipulation of programming of information technology” pursuant to N.J.S.A. 47:1A-5c;
2. That regardless of the aforementioned, the City’s charge of \$75/hour for labor and \$75/hour for computer time is not substantiated as the “cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.” [N.J.S.A. 47:1A-5c]; and that,
3. Therefore, the City has failed to establish that the charge of \$150 for a copy of the Paterson Police Department’s blotter or log for September 10, 2002 is permitted under OPRA and that the City may charge only standard OPRA per-page rates for the record.

NOTE: As of the close of business on December 6, 2002, no responses to the Preliminary Findings were received from either party. Officials from Paterson advised us that they had not yet reviewed the Findings. If material does arrive, it will be forwarded to the Council immediately.

Statement of Facts

By letter dated September 18, 2002 Richard Gutman, on behalf of his client Douglas Krisburg, asked the City Clerk for a copy of the Paterson Police Department's "Calls For Service" for September 10, 2002. By letter dated September 25, 2002 City Clerk Jane Williams-Warren advised Mr. Gutman that the record was available at a cost of \$150.

On or about September 30, 2002, Mr. Krisburg filed a Complaint with the GRC challenging the amount of the fee. In a supplemental submission to the Council on October 31, 2002, Joseph Rafferty, Captain of the Paterson Police Department stated that Mr. Krisburg's claim was frivolous and advised:

"We did not deny any records. We offered to supply the records at a reasonable cost. This is not a report that is produced routinely. We have to create or modify a job to produce the report and then search the files for the date. This takes time and we charge a fee based on I.T. Industry standards. The same fee structure is used throughout the City."

On November 4, 2002, Mr. Gutman supplemented his client's complaint with documentation that numerous other police departments provided a days' worth of police "calls for service" (Police "blotters" or "logs"¹) at standard OPRA per-page copy rates set forth in N.J.S.A. 47:1A-5a. This fact must be offset against the City's claim that a 16-year old system requires a higher level of effort to produce such reports. No evidence was offered as to the age of the computer systems in the other police departments.

Analysis

OPRA requires that a custodian prove that a decision to "deny" access to a government record is lawful. N.J.S.A. 47:1A-6. It is logical to conclude that even in cases such as this where a record is offered to a requester, a custodian can "deny" access to a record by imposing unlawful copy fees or special charges.

The portion of OPRA pertaining to this complaint is N.J.S.A. 47:1A-5c, which provides:

"A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.

¹ A sample of police log or blotter is attached.

If a request is for a record:

- in a medium not routinely used by the agency;
- not routinely developed or maintained by an agency; or
- requiring a **substantial amount** of manipulation or programming of information technology, the agency may charge,

in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on **the cost for any extensive use** of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.” **[Emphasis added]**

The City did not provide any substantiation that it needed to charge anything beyond standard OPRA per-page rates for preparing the report. Were the City to prove that it does not routinely develop or maintain such reports, OPRA would allow the City to charge only its *actual* cost to produce the report. Further, the City claims that the rates it charges for computer time and labor are based upon I.T. (Information Technology) industry standards, but submits no evidence what those standards are. There is also no city ordinance that sets costs for labor or computer time, nor does the City provide any proof as to the actual time spent doing the work necessary to produce the report.

It must also be noted that the bulk of the programming to accomplish the report would likely have been done in July 2002 for Mr. Gutman’s client Linda Ellen Fisher (GRC Complaint No. 2002-46). In the absence of information to the contrary, it can be concluded that only limited additional program writing would have been needed to produce the same report for Mr. Krisburg in September.

While the City’s asserts that it took its personnel one hour of labor and one hour of computer time to produce a copy of the Police blotter for September 10th, the City does not offer any facts to allow the Council to conclude that this amount of time and effort is “substantial” or represents “extensive use of information technology” in the context of the City’s fiscal, computer or human resources pursuant to N.J.S.A. 47:1A-5c.

For the foregoing reasons, the Executive Director concludes that in the absence of factual information to the contrary from the City, one hour of time is *not* a “substantial amount of manipulation of programming of information technology” and that preparing the report does not result in the “extensive use of information technology ...,” pursuant to N.J.S.A. 47:1A-5c.

Based upon the factual record currently before the Council, the Executive Director recommends that the Council find:

- that the City has failed to establish that the charge of \$150 for a copy of the Paterson Police Department’s blotter or log for September 10, 2002 is permitted under OPRA;

- that the imposition of this charge constitutes a denial of access which the Custodian has failed to justify as lawful under OPRA; and,
- order that the Custodian make the record available to the complainant at the standard per-page rate set forth in N.J.S.A. 47:1A-5a.

A handwritten signature in dark ink, appearing to read "Marc H. Pfeiffer", is written over a horizontal line.

Marc H. Pfeiffer, Acting Executive Director
Government Records Council

Dated: December 6, 2002

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Final Decision

DOUGLAS KRISBURG,
Complainant

Complaint No. 2002-55

v.

CITY OF PATERSON,
POLICE DEPARTMENT
Custodian of Record.

Decision Issued: December 12, 2002
Decision Effective: December 19, 2002

At its December 12, 2002 public meeting the Government Records Council considered Complaint #2002-55 filed under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq. by requester Krisburg challenging the fee assessed by the Custodian for access to a government record. The Council considered the Complaint, the Custodian's Statement of Information in response to the Complaint, any additional submissions by the parties as well as the Executive Director's Findings and Recommendations dated December 6, 2002.

The Council having decided by affirmative vote of all five Council members on December 12, 2002 to adopt the findings and recommendations of the Executive Director, the Council herewith awards the Complainant the following relief for the reasons set forth in the Executive Director's Findings and Recommendations:

- A. The Custodian shall charge the requester only the per-page copy rates in N.J.S.A. 47:1A-5b for the record in question.
- B. Because the requester is a "prevailing party" pursuant to N.J.S.A. 47:1A-7f and entitled to reasonable attorney's fees from the Custodian.
 - a. The parties shall attempt to reach an amicable resolution concerning the amount of fees due the requester and shall advise the Council in writing of the terms of any agreement.
 - b. If, by **January 13, 2002**, the Requester and the Custodian have not reached an amicable settlement, the requester shall submit to the Council and the Custodian no later than **5 p.m., January 15, 2003** a written application for fees supported by an attorney affidavit of service pursuant to New Jersey Court Rule 4:42-9(b).
 - c. The Council shall provide the Custodian an opportunity to comment on the application and the requester, an

opportunity to reply thereto. Thereafter, at a public meeting, the Council shall reach a Final Decision concerning the amount of attorney's fees due the requester.

This decision regarding the lawful fee for access to the record in question and the "prevailing party" status of the requester under OPRA is a Final Decision on these issues and shall become effective for purposes of appeal on December 19, 2002.

/s/ VINCENT MALTESE
Chair, Government Records Council

I attest the foregoing is a true
and accurate record of the
Government Records Council

/s/ VIRGINIA HOOK, Secretary
Government Records Council